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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE THE APPLICATION OF:

Inventor : Mitchell R. Swartz

PAPER:

Group Art Unit: 3641

Serial no. 09/750, 480

Examiner: R. Palabrica

Filed: 12/28/00

For: **METHOD AND APPARATUS**

TO MONITOR LOADING

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This is a continuation of Serial no. 07/371,937

Filed: 06/27/89

Commissioner for Patents

Alexandria, VA 22313-1450

October 18, 2004

Applicant's Response To The Office Notice Of 9/23/04

1. The Appellant received said Notice of noncompliance Amendment mailed September 23, 2004. This is Appellant's Response to the Office's communication [Notice of Non-Compliant Amendment; hereinafter "Notice" or "Communication" dated 9/23/04 (cover as Exhibit "A", attached). Said communication is stamped by Michael Carone.

2. Said office Communication dated 9/23/04 purports that there are errors in the format of the Claims submitted in an Amendment document purported to be February 3, 2004, but actually dated January 28, 2004 based upon the Certificate of Mailing attached therein.

3. The Appellant respectfully disputes the comments of the Office, and notes that said office communication substantively ignores both content and argument in the Appellant's Communication purported to be February 3, 2004, but actually dated January 28, 2004 based upon the Certificate of Mailing attached therein.

4. The Appellant will demonstrate that Mr. Carone appears to have made a series of substantive errors which the Appellant will forensically detail below.

5. The Examiner's Notice states that

"(e)ach claim has not been provided with proper status identifier, and as such, the individual status of each claim cannot be identified."

THE TRUTH -Each claim was provided with proper status identifier

The Examiner's statement is not true. Each claim was provided with proper status identifier, and as such, the individual status of each claim can be identified. On pages 91 and thereafter in Appellant's (then Applicant's) Communication, there was a proper identifier AND changes were shown in the claims by underlining and strikethrough. As proof, pages 91 and thereafter are herein included as Exhibit "B" (attached).

6. The Examiner's Notice states that

" amended, corrected" not proper identifier ... changes not shown in claims (underlining, bracketing)"

THE TRUTH -There was a proper identifier AND changes were shown in the claims by underlining and strikethrough.

The Examiner's statement is not true. Notwithstanding the above, in any case, the Amendments are again submitted. Appellant notes however, that there is evidence that they were correctly submitted previously. On pages 91 and thereafter in Appellant's (then Applicant's) Communication, there was a proper identifier AND changes were shown in the claims by underlining and strikethrough. As proof, pages 91 and thereafter are herein included as Exhibit "B" (attached).

7. Egregiously, the Mandatory Compliance of 37 CFR 1.121 designates strikethroughs for deletions --as the Applicant used [confer Exhibit "B"]-- and NOT bracketing except in certain limited cases involving five or less characters. Why would the Examiner direct the Applicant AWAY from the Mandatory Compliance of 37 CFR 1.121? Is it the same reason that Applicant's papers have been repeatedly removed from the files? Is it the same reason that pages 91 and thereafter were simply ignored or "lost"?

8. The Examiner's Notice states that

"amended claims 8 and 10 ... raise new issues that would require further consideration and/or search and they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal."

THE TRUTH -There was no new material and Applicant's Arguments were Ignored

The Amendments do NOT involve new material. Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments, nor did the Examiner discuss Applicant's arguments, nor did the Examiner rebut Applicant's arguments. Therefore it is impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Arguments.

In contrast to the Examiner's statement, the Amended claims 8 and 10 do not raise new issues that would require further consideration and/or search. Applicant's arguments were ignored. In contrast to the Examiner's statement, the Amended claims 8 and 10 do place the application in better form for appeal by materially reducing or simplifying the issues for appeal. Applicant's arguments were ignored.

9. The Examiner's Notice states that the proposed amendments will not be entered. This is unfair. This is unreasonable. This has also been a pattern. Since receipt of the Remand from the Board, the Examiner and/or Mr. Carone has made false statement after false statement. If there was a fifty percent likelihood of each error (that is, if it were made innocently), then the scores of errors since then reveal that there is only a one in a trillion likelihood that Mr. Carone and/or the Examiner are innocent.

10. There has been a failure of due diligence, and violations of civil rights and administrative law, and obstructions of Congressional directives -- all under color of law by the Office. One reason is that the Board remanded a case to Mr. Carone (cover as Exhibit "C", attached), and since that day, Mr. Carone has personally attempted to throw out each and every one of the Applicant's patent applications in an apparent attempt to obstruct justice and deny and usurp the Applicant his Constitutionally-protected rights.

11. Applicant (now Appellant) respectfully notes that the U.S. Supreme Court has ruled that any pro se litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

12. The Applicant (now Appellant) respectfully notes the materials were previously presented.

The Applicant (now Appellant) also submits the requested claims as requested in Exhibit "A".

The Applicant (now Appellant) notes that the arguments why these claims (8 and 10, as noted on Exhibit "A") submitted for entry by the Examiner are NOT new issues were simply ignored again, and thus Applicant (now Appellant) now reasonably requests again a substantive explicit response to facilitate the Appeal.

Respectfully submitted,



Mitchell R. Swartz, ScD, MD, *pro se*

Certificate Of Mailing [37 CFR 1.8(a)]

To Whom it Does Concern:

I hereby certify that this correspondence will be deposited with the United States Postal Service by First Class Mail, postage prepaid, in an envelope addressed to

"Office of the Clerk, Board Of Patent Appeals
c/o The Commissioner for Patents, Alexandria, VA 22313-1450"
on the date below.

Thank you.

Sincerely,

October 18, 2004


M.R. Swartz



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/750,480

12/28/2000

Mitchell R. Swartz

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7590

09/23/2004

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EXAMINER

PALABRICA, RICARDO J

ART UNIT

PAPER NUMBER

3641

DATE MAILED: 09/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

EXHIBIT "A"

Serial no. 09/750,480

January 23, 20043

In The Claims

The following claims have been submitted, which if entered will be amended as follows:

Claim 1 has been amended as follows:

1. (amended, corrected) In a process in which a material is electrochemically loaded with second material, a method of monitoring the loading within said material that comprises:

loading said second material,
driving a mechanical vibration of said material loaded with second material,
monitoring the frequency of said vibration, and
relating said frequency of said vibration to the mass of said material.

(amended) In a process in which ~~for producing a product using~~ a material which is electrochemically loaded with second material, a method of monitoring the loading within said material that comprises:

loading said second material,
~~mechanically coupling said material so as to enable producing~~ a mechanical vibration of said material loaded with second material,
~~providing means to drive said vibration,~~
~~providing means to follow monitoring~~ the frequency of said vibration, and
relating said frequency of said vibration to the mass of said material.

EXHIBIT "B"

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

Paper No. 69

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MITCHELL R. SWARTZ

Appeal No. 1997-3208
Application 07/339,976

ON BRIEF

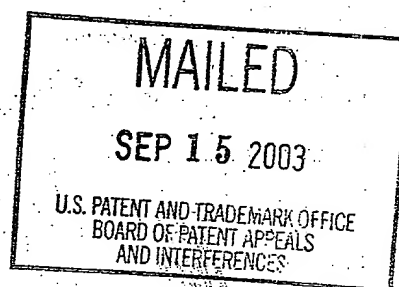


EXHIBIT "C"

Before METZ, WARREN and DELMENDO, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

REMAND TO THE EXAMINER

We remand the application to the examiner for consideration and explanation of issues raised by the record. 37 CFR §1.196(a) (2003); Manual of Patent Examining Procedure (MPEP) § 1211 (8th ed., Rev. 1, Feb 2003; 1200-29 – 1200-30).

The record shows that appellant filed a brief on April 26, 1996 (Paper No. 41), which we consider in this appeal.¹ The brief refers to a number of declarations including, several apparently newly filed with the brief, as well as to several letters, also newly filed with the brief (pages 2-4), which are relied on to show fact and opinion. In addition, it is apparent that a

¹ We have not considered the brief filed May 31, 1994 (Paper No. 24) which was held not to comply with the rules by the examiner in the notice of defective brief mailed March 29, 1996 (Paper No. 36).